

Please see signature page for complete list of parties represented.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BETTER FOOD CHOICES, LLC,

Plaintiff,

Civil Action No. 3:15-cv-00198-WHA

V.

AMAZON.COM, INC., APPLE, INC. and
GOOGLE, INC.,

Defendant.

**STIPULATED REQUEST FOR ORDER
STAYING CASE PENDING RESOLUTION
OF PETITION FOR COVERED BUSINESS
METHOD REVIEW BY USPTO**

Plaintiff Better Food Choices, LLC (“Plaintiff”) and Defendants Amazon.com, Inc. (“Amazon”), Apple Inc. (“Apple”), and Google Inc. (“Google,” collectively “Defendants,” and together with Plaintiff, “the Parties”) hereby jointly request an order staying this case pending resolution by the U.S. Patent and Trademark Office of the Petition for Covered Business Method Review of U.S. Patent No. 5,841,115 (the “115 patent”) filed by Google, which asks the Patent Office to decide all claims of the sole patent-in-suit are unpatentable and invalid.

In support of their stipulated request, the Parties state as follows:

1. On February 4, 2015, Google filed a Petition requesting that the Patent Trial and Appeal Board (“PTAB”) review the patentability of the ’115 patent under the Transitional Program for Covered Business Method Patents (CBM) established by Section 18 of the Leahy-Smith America Invents Act (“AIA”).

1 2. Section 18(b)(1) of the AIA provides:

2 If a party seeks a stay of a civil action alleging infringement of a patent under Section 281
 3 of title 35, United States Code, relating to a transitional proceeding for that patent, the
 4 court shall decide whether to enter a stay based on—

5 (A) whether a stay, or the denial thereof, will simplify the issues in question and
 6 streamline the trial;

7 (B) whether discovery is complete and whether a trial date has been set;

8 (C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party
 9 or present a clear tactical advantage for the moving party; and

10 (D) whether a stay, or the denial thereof, will reduce the burden of litigation on the
 11 parties and on the court.

12 3. Under this and other CBM provisions in the AIA, the PTAB has authority to
 13 invalidate claims in a patent, including because they are unpatentable subject matter under 35
 14 U.S.C. § 101 and/or invalid under § 112.

15 4. Google's CBM Petition challenges the validity of all claims of the '115 patent,
 16 which is the only patent at issue in this action. Accordingly, the CBMR Petition has the potential
 17 to resolve this case in its entirety.

18 5. Although Amazon, Apple, and Plaintiff did not participate in the process of
 19 drafting or approving the CBM Petition or contribute to its funding, any decision that the '115
 20 patent is invalid in its entirety would simplify, if not eliminate, all issues in question, and reduce
 21 the burden of litigation on the Parties and on the Court.

22 6. This case is still at the pleading stage; discovery has not begun; and no trial date
 23 has been set.

24 7. The requested stay would not prejudice any Party or present a tactical advantage to
 25 any Party, in part because the patent is expired and no injunction is available. The Parties thus
 26 agree to file this stipulated request.

27 8. The Parties believe that a stay of this action pursuant to Section 18(b)(1) of the
 28 AIA is desirable and appropriate.

29 Accordingly, the Parties hereby request a stay of this action until the Parties notify the
 30 Court within fifteen days after the date that the CBMR Petition reaches a final disposition. The

1 Parties agree that the date of a final disposition will be (a) the day on which the PTAB issues a
2 decision that disposes of the CBMR Petition, (b) the day on which any applicable period for
3 appeal from such a decision expires, or (c) the day on which final judgment issues in any appeal
4 taken from such a decision, whichever occurs later.

5 DATED: February 13, 2015

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[PROPOSED] ORDER STAYING CASE
PENDING RESOLUTION OF PETITION
FOR COVERED BUSINESS METHOD

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated:

District Judge William Alsup

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STAYING CASE
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